

Editor's note: Reconsideration granted; decision affirmed -- See 76 IBLA 151 (Sept. 27, 1983) -- See 76 IBLA 151 for litigation history.

RICHARD F. CARROLL

IBLA 83-93

Decided March 22, 1983

Appeal from decisions of Montana State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers M 55630, M 55631, M 55632, and M 55633.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

Where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e) (4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

APPEARANCES: John L. Gallinger, Esq., Billings, Montana, for appellant; Ted H. Williams, intervenor, pro se; Patricia L. Brown, Esq., for Frances Kunckel, intervenor.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Richard F. Carroll appeals from decisions of the Montana State Office, Bureau of Land Management (BLM), dated September 30, 1982, rejecting his oil and gas lease offers M 55630, M 55631, M 55632, and M 55633, because these offers were in violation of 43 CFR 3111.1-1. BLM explained that only one originally-signed copy of each offer was filed and the other four copies of each offer were xeroxed copies of the front of the original. BLM stated that 43 CFR 3111.1-1 provides that five copies of the official form or valid reproduction thereof shall be filed and that each offer must be signed in ink by the offeror. 1/

The governing regulation, 43 CFR 3111.1-1(a), provides as follows:

(a) Application -- (1) Forms. Except as provided in Subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: Provided, That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Authorizing officer of the Proper Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

The regulation dealing with curable defects in oil and gas lease offers, 43 CFR 3111.1-1(e), states in pertinent part:

(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

* * * * *

1/ BLM also rejected appellant's oil and gas lease offer M 55632 because the oil and gas rights in some of the lands included in this offer are not owned by the United States. Appellant did not question this portion of BLM's decision in his statement of reasons and therefore BLM's decision on this matter is final. See 43 CFR 4.412.

(4) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

On appeal, appellant contends that he complied with all of the terms and conditions for filing the offers with the exception of reproducing on the copies the reverse side of the form; that 43 CFR 3111.1(e)(4) recognizes that the failure to reproduce exactly is a curable defect; that the only condition precedent to such a defect being curable is that the offeror agrees to be bound in the offer to the terms and conditions of the lease form in effect at the date of filing; that he complied with such condition when he individually executed each of the five copies of each offer on forms, all of which contained paragraph 8, stating his agreement to be bound by the terms and conditions contained in any lease form in effect at the date of filing; and that appellant's lease offers should not have been rejected, but, instead returned to him so the defects could be cured.

Ted Williams and Frances Kunckel, who also filed offers to lease lands included in this appeal, filed answers to appellant's statement of reasons. Both assert that the reproduction of the application forms and the signatures are not valid.

The two issues involved in this appeal are: (1) whether the four photocopied signatures of the original signature for each offer are valid signatures within the meaning of 43 CFR 3111.1-1(a); and (2) whether the four copies of the front of the lease form without copies of the reverse side of the lease form for each offer are exact reproductions of the lease form within the meaning of 43 CFR 3111.1-1(a).

[1] There is no question in this case that the original of each offer was signed in ink by appellant. In Fayette Oil and Gas Corp., 71 IBLA 79 (1983), the Board considered the issue of whether the photocopies of that original signature satisfy the regulation. In the Fayette case the Board held that where an oil and gas lease offeror signs an offer form in ink and submits that form plus four exact reproduction photocopies of that form intending that the photocopied signature be the official signature of the offeror, the offeror has complied with the signature requirement of 43 CFR 3111.1-1(a). Neither BLM nor the other two offerors argue that the photocopied signatures are not reproductions of the original signatures. Also, there is no evidence in this case to indicate that appellant did not intend that the photocopied reproductions of his signature constitute his signature. Cf. Duncan Miller, 10 IBLA 208 (1973). Based on the rationale in the Fayette decision, we hold that appellant's signature is in compliance with 43 CFR 3111.1-1(a) and that BLM erred in holding that the photocopies must be signed in ink by the offeror.

[2] Regarding the second issue, 43 CFR 3111.1-1(a) requires the submission of five copies of the official oil and gas lease offer form, or valid reproductions thereof. For each offer filed, appellant submitted one original and four photocopies of the front of the completed form. The reverse sides of the photocopies were blank. The regulation also requires that the

approved form may be reproduced provided that the copies are exact reproductions of one page of both sides of the official approved one page form. This same information is also recited at the bottom of the lease form itself. Failure to file an exact reproduction of both sides of the form affords a proper basis for rejection of the offer. Duncan Miller, 7 IBLA 169 (1972).

The facts of the case in issue are distinguishable from those in Fayette Oil and Gas Corp., supra. In the Fayette case, the original copy of the lease had been signed by Fayette's president with the remaining four copies being photocopied reproductions of the original. Each copy contained an exact reproduction of the signature and each copy was an exact reproduction of both sides of the one page form. In the present case, appellant did not submit four copies of the reverse side of the form for each offer and therefore his copies were not exact reproductions of the official form within the meaning of 43 CFR 3111.1-1(a).

Appellant asserts that failure to submit a reproduction of the reverse side of the form is a curable defect. 2/ One of the curable defects listed in 43 CFR 3111.1-1(e) is: "An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing."

Appellant submitted exact copies of the front page of the lease form. The following provisions appear on the front page:

7. Offeror's signature to this offer shall also constitute offeror's signature to, and acceptance of, this lease and any amendment thereto that may cover any land described in this offer open to lease application at the time the offer was filed but omitted from this lease for any reason, or signature to, or acceptance of, any separate lease for such land. The offeror further agrees that (a) this offer cannot be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before this lease, an amendment to this lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed in behalf of the United States, and (b) this offer and lease shall apply only to lands not within a known geologic structure of a producing oil or gas field.

8. If this lease does not contain all of the terms and conditions of the lease form in effect at the date of filing, the offeror further agrees to be bound by the terms and conditions contained in that form.

We find that by the terms of these provisions, appellant has agreed to be bound by the terms and conditions of the lease form as required by 43 CFR 3111.1-1(e)(4). Therefore, appellant's defect is curable.

2/ In Duncan Miller, 7 IBLA 169 (1972), the appellant failed to reproduce the reverse side of the form on one of his copies and the Board held that this failure provided a proper basis for rejection of the offer. The Board did not reach the issue of whether this was a curable defect because it rejected Miller's offer for another reason.

We remand this case to BLM for the signing officer to approve the offer in accordance with 43 CFR 3111.1-1(e), provided all other requirements are met. We direct BLM to allow appellant a reasonable, definite amount of time in which to submit a lease offer which meets the requirements of 43 CFR 3111.1-1(a). If appellant chooses to submit photocopies of the lease form, such photocopies must be "exact reproductions of one page of both sides of the official approved one page form." 43 CFR 3111.1-1(a). That is, the front and back of the form must be reproduced on each side of a single sheet of paper. The four copies must be exactly the same as the original. Appellant must submit five copies of the official form, or valid reproductions thereof, within the time specified by BLM. If the offers are acceptable, BLM will consider the offers to have been filed on the date the original offers were filed, June 24, 1982. Failure to comply with the requirements of 43 CFR 3111.1-1(a) will result in rejection of appellant's lease offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and remanded to BLM for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

